(b) Adoption of a child is made with the cognisance of the whole family of the adopter and the newly adopted child must make obeisance before the ancestral tablets of the adopting family in token of his admission, a ceremony without which no change in the family life would be effectual.

(c) During the funeral ceremony of a Chinese deceased, sons are wearing white sackcloth mourning dresses and maternal grandsons are wearing blue ones. It is customary to read out a list of recognised descendants which is burnt at the ceremony or put in the newspapers. The degree of the mourning dress worn by a person during the funeral ceremony of his parent or grandparent is to distinguish his or her status or relationship with deceased."

The other was Liong Kim Chong, the Kapitan China, who as we understand the position, is a recognised leader of the Chinese Community, though his exact legal status at present appears to be somewhat obscure. He claimed the same knowledge and gave the same opinions in such similar language that there is no necessity to repeat them here. His view is that the adoption of the grandson by his grandmother cannot be sanctioned by Chinese custom.

At the hearing of the petition in open court, both parties were agreed that the case be tried on the affidavit evidence and that no oral evidence be adduced except the evidence of the petitioner and for the respondents, that of the Resident who directed the District Officer to register the adoption.

The learned judge accepted Lam Chun Ngin and Liong Kim Chong as experts and on the evidence before him, held that the adoption was contrary to Chinese custom and practice and accordingly he declared the adoption to be void and of no effect.

Certain notes on Chinese Family Law originally compiled and printed in 1927 were reprinted in 1955 at the Sarawak Government Printing office by the Acting Government Printer. In Chapter V of Part I, it is stated at pages 19-21 that

"An adoption is a contract, usually for some consideration, to which the consent of both parties — the adoptive family and the family of the person to be adopted — is necessary. It is a family arrangement and can be carried out without the sanction of the court. It shall be lawful, however, for the court on reasonable complaint being made by either of such families, or by the person to be adopted, to inquire into any grounds of objections against any adoption being carried out and to forbid any adoption or to make any other order thereto as it thinks proper and just.

....

If a Chinese has no son he may adopt a nephew who is the son of one of his brothers; if there is no such nephew, then the grandson of one of his uncles or the great grandson of one of his granduncles; if there are no agnates of a lower generation or young enough in age, such Chinese may adopt a stranger, if possible of the same sing, commonly called seh or Chinese surname; if no such stranger is obtainable, such Chinese may demand in adoption a child of a sister or a grandchild of an aunt. An elder brother is entitled to adopt any one who will live. An elder brother is bound to give a son, if one is available, in posthumous adoption to a younger brother who has died childless.

....

It is illegal for a father to adopt a grandson during the lifetime of his own son, even though that son be without a natural-born son."

Though the reprint carries the precautionary advice of the printer that the principles quoted relate to erstwhile Chinese custom and bear little relation to current Chinese law, it is implicit in the evidence of the two experts that there has been no change in the customary law.

Now there is a slight difference. Whereas the experts are clearly of the opinion that the adoption of the grandson by the grandmother is contrary to and therefore void by Chinese custom, the notes state that the illegality subsists only during the lifetime of the son. But while noting this difference, we do not consider that it has any relevance since the son (the petitioner) is at all material times and still is alive, and the adoption is clearly against Chinese custom.

The respondents however urged under section 8, *supra*, that the adoption should not be annulled in the interests of the child, since that is the paramount consideration. It certainly is in the child's financial interests that he should come into his expected inheritance but finance is only one of the matters that a court must take into consideration. From the very inception of the adoption the physical and psychological care of the child has been at the hands of his natural parents and he doubtless will continue to receive the same love and care. The parents have, as respondents, not made the slightest attempt to contest the illegality issue. It is settled law that no court will enforce a transaction vitiated with illegality.

With respect, we agree with the learned judge that the declaration sought by the petitioner must be made that the adoption of the grandson by the deceased is illegal. The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Goh & Liew; Lee & Co.*

WIX CORPORATION SOUTH EAST ASIA SDN. BHD. v. MINISTER FOR LABOUR AND MANPOWER & ORS.

[O.C.J. (Harun J.) April 17, 1978]

[Kuala Lumpur — Originating Motion No. 66 of 1977]

Administrative Law — Application for certiorari — Conciliation — Application to produce reports of conciliation proceedings — Reference by Minister to Industrial Court — Whether reports relate to affairs of state — Privilege — Industrial Relations Act, 1967, ss. 20 & 54 — Evidence Act, 1950, ss. 123 & 162.

Evidence — Reports of conciliation proceedings — Whether reports relate to affairs of state — Evidence Act, 1950, ss. 123 & 162.

Industrial Law — Reports of conciliation proceedings — Whether relate to affairs of state — Privilege — Evidence Act, 1950, ss. 123 & 162 — Industrial Relations Act, 1967, ss. 20 & 54.

In this case the applicant had applied for an order of *certiorari* to quash an order of Reference made by the Minister of Labour to the Industrial Court. The original dispute in this case related to dismissal and in accordance with section 20 of the Industrial Relations Act was referred to the Regional Director of Industrial Relations (Selangor and Pahang) for conciliation. The Regional Director made a report to the Director-General of Industrial Relations who in turn made a report to the Minister of Labour. In this application the applicant applied for a subpoena directing the Director-General of Industrial Relations to produce *inter alia* the two reports. Objection to the production of the reports was made on the ground that they related to affairs of state and privilege was claimed under sections 123 and 162 of the Evidence Act, 1956.

Held: (1) the reports under section 20 of the Industrial Relations Act 1967 are not official records relating to affairs

of state within the meaning of section 123 of the Evidence Act, 1950;

(2) to enable the court to make a decision in the application for *certiorari*, the court must know whether the provisions of section 20 of the Industrial Relations Act have been complied with and this it could only do after a full disclosure of the events that have happened leading to the application. An order should therefore be made for the reports to be produced.

The following cases were referred to in argument: *State of Punjab* v. *Sodhi Sukhdev Singh* A.I.R. 1961 S.C. 493; *State of Utter Pradesh* v. *Raja Narain Singh* A.I.R. 1975 S.C. 865; *M. & W. Grazebrook* v. *Wallens* [1933] I.C.R. 256; *Conway* v. *Rimmer & Anor.* [1968] 1 All E.R. 874; *Norwich Pharmacal Co. & Ors.* v. *Customs & Excise Commissioners* [1974] A.C. 133; *Amar Chand Butail* v. *Union of India* A.I.R. 1964 S.C. 1658; *Haralal Sadasheorao Bande & Ors.* v. *State Industrial Relations Court Nagpur* (1967) Bom. 174; *B.A. Rao & Ors.* v. *Sapuran Kaur & Anor.* [1978] 2 M.L.J. 146.

ORIGINATING MOTION.

C.V. Das (*P. Royan* with him) for the applicant.

Fong Seng Yee (Senior Federal Counsel) for 1st & 2nd respondents.

V.T. Nathan (*Norbert Choong* with him) for 3rd respondent.

Cur. Adv. Vult.

Harun J.: This was an application for an order of certiorari to quash an order of Reference made by the Minister of Labour to the Industrial Court.

For the purpose of the hearing of the aforesaid application, the applicant obtained a *subpoena duces tecum* directing the Director-General of Industrial Relations to produce *inter alia* two reports viz.,

(i) Report of the Regional Director of Industrial Relations (Selangor & Pahang) to the Director-General of Industrial Relations on conciliation proceedings pursuant to section 20(2) of the Industrial Relations Act, 1967; and

(ii) Report of the Director-General of Industrial Relations to the Minister of Labour pursuant to section 20(3) of the Industrial Relations Act, 1967.

The first and second respondents objected to the production of these two reports on the ground that they relate to affairs of State and claimed privilege under sections 123 & 162 of the Evidence Act, 1950.

The question then is whether these two reports are unpublished official records relating to affairs of State within the meaning of section 123 of the Evidence Act which reads:

"No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withold permission as he thinks fit, subject, however, to the control of a Minister in the case of a department of the Federal Government, and of the Chief Minister in the case of a department of a State Government."

By section 162 of the Evidence Act, it is for the court to decide on the validity of any objection to the production of a document on which privilege is claimed under section 123 of the Evidence Act and determine its admissibility in an enquiry of all available evidence. Section 162 reads:

"(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court.

(2) The court, if it sees fit, may inspect the document unless it refers to affairs of State, or take other evidence to enable it to determine on its admissibility."

In the instant case, the evidence on the objection to the production and admissibility of the two reports are to be found in three affidavits viz.,

(i) The Deputy Director-General of Industrial Relations who in his affidavit merely stated the events leading to the report of the Director of Industrial Relations (Selangor & Pahang);

(ii) The Minister of Labour who in his affidavit asserted that he had the power to refer the matter to the Industrial Court; and

(iii) The Secretary-General of the Ministry of Labour who in his affidavit stated *inter alia*:

"(3) The said Conciliation Proceedings was carried out as a departmental conciliation proceeding to resolve the differences between the parties. There was free discussion at conciliation levels, and what was said was made in strict confidence.

(4) The reports of the Regional Director of Industrial Relations dated the 19th January 1977 and the Director General of Industrial Relations dated 3rd February, 1977 contain statements of facts, remarks, opinions and recommendation of witnesses and members of the Conciliation Proceedings, all given in strict confidence to the Department.

(5) I personally and carefully perused and considered the said reports and I am of the opinion that it would be detrimental to the public interest to disclose the contents of the said reports which were furnished for the guidance of my Ministry. This report is always referred to the Minister in an advisory capacity by the Director-General of Industrial Relations.

(6) Disclosure of the said reports will be prejudicial to the public service since maintenance of secrecy of such documents is necessary for the proper functioning of departmental proceedings. Moreover I have examined the said documents and I am satisfied that the said documents are unpublished records relating to affairs of the State."

"Affairs of State" is not defined in the Evidence Act because each case has to be decided on its merits. The primary consideration is whether disclosure will be injurious to the public interest. Obvious examples where it is against the public interest to disclose are Cabinet papers and matters relating to national security or diplomatic relations with foreign countries. *Prima facie* a dispute between an employer and employee arising out of a contract of service could hardly be said to be an affair of State within the meaning of section 123 of the Evidence Act. What then if the Minister intervenes in the dispute.

One of the objects of the Industrial Relations Act is the settlement of disputes between employers and employees. The Act provides for machinery to settle disputes by conciliation as speedily as possible and if that fails the dispute is referred to the Industrial Court where the dispute is resolved with the minimum of formality.

In the instant case, the relevant provisions of the Act which are applicable to this dispute are:

"Section 20(1) Where a workman who is not a member of a trade union of workmen considers that he has been dismissed without just cause or excuse by his employer he may, within one month of the dismissal, make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director

General nearest to the place of employment from which the workman was dismissed.

(2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at within a period of not more than thirty days from the date of receipt of the representations. Where the Director General is satisfied that there is no likelihood of the representations being settled within the said period of thirty days or where the representations remain unsettled at the end of the said period of thirty days the Director General shall notify the Minister accordingly.

(3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the court for an award."

The application for an order of *certiorari* is being made on grounds of breach of natural justice and excess of jurisdiction on the part of the Minister. It becomes necessary, therefore, for the court to have all the facts at its disposal which led the Minister to make the reference to the Industrial Court. In this context, the Director of Industrial Relations (Selangor & Pahang), the Director-General of Industrial Relations and the Minister were all exercising quasi-judicial functions in a dispute between two subjects. There is nothing in the proceedings under section 20 that could involve State secrets or national policy. The report of the Regional Director could only contain the statement of facts as put forward by each side and the steps taken at conciliation. The Report of the Director-General to the Minister could only be his reasons for being satisfied that a settlement could not be reached within 30 days. Merely because the Minister exercised functions under the Act does not make the matter an affair of State. For these reasons, I held that reports under section 20(2) of the Industrial Relations Act are not official records relating to affairs of State within the meaning of section 123 of the Evidence Act.

Reference was made to section 54(2) of the Act which reads:

"In a proceeding before the court on a reference to the court under section 20(3), no evidence shall be given of any proceeding before the Director General under section 20(2) other than a written statement in relation thereto agreed to and signed by the parties to the reference."

"The Court" in this section means the Industrial Court. Conciliation proceedings are held on a without prejudice basis and the parties may have agreed to settle on certain conditions. Failing settlement, the dispute is revived again and the Industrial Court hears the evidence afresh. The exclusion of evidence of the proceedings under section 20(2) is to avoid prejudice in the mind of the Industrial Court against either party. These considerations do not apply to the High Court in hearing an application for an order of *certiorari* and indeed section 54(2) is of very limited application viz.: to proceedings before the Industrial Court under section 20(3).

In this court the issues are different. Was it right for the third respondent to make the representation under section 20(1) and if so was this a proper case for the Minister to refer the matter to the Industrial Court. To enable this court to make a decision, it must know whether the provisions of section 20 have been complied with and this it may only do with a full disclosure of the events that have happened leading up to this application.

For these reasons, I ordered that the second respondent produce the two reports referred to in the *subpoena duces tecum.*

Order accordingly.

Solicitors: *Shook Lin & Bok; Shearn, Delamore & Co.*

A.J.A. PETER v. O.G. NIO & ORS.

[O.C.J. (Abdul Hamid J.) March 21, 1979]

[Kuala Lumpur — Civil Suit No. 238 of 1971]

Tort — Libel — Identification — Whether article referred to plaintiff — Tests to be applied — Resignation of agent of insurance company — Letters sent to policy-holders — Leaflet relating to "Twisters" enclosed — Letters sent to further interest of company — Damages.

In this case the plaintiff was an agency supervisor of an insurance company, the third defendant. The first defendant was also an agency supervisor of the company and the second defendant was the Vice-President of the Company. The plaintiff claimed damages for libel in respect of (a) an article appearing in the official publication of the company, the "Pacemaker"; (b) a letter sent by the second defendant to an agency of the company; (c) a letter sent by the first and third defendants to policy-holders of the company.

Held: (1) the article was such as would lead those who were dealing with the plaintiff to the conclusion that the article referred to him and that the defamatory words used were referable to the plaintiff and were so used with the intention of identifying him;

(2) the plaintiff has failed to prove his case in respect of the letters sent to the agent and policy-holders of the company. The letters were published primarily to protect the company's interest with no intention whatsoever to link the plaintiff to the word or words complained of;

(3) in the circumstances of the case and in the light of the authorities a fair and reasonable compensation should be in the region of $15,000 for full liability. This sum however ought to be reduced because of the plaintiff's own behaviour in the matter. Judgment would be entered against the third defendant in the sum of $9,000 by way of damages.

Cases referred to:-

(1) *Lewis* v. *Daily Telegraph* [1964] A.C. 234.

(2) *Jones* v. *Skelton* [1963] 3 All E.R. 952, 958.

(3) *Grubb* v. *United Press Ltd.* [1963] 1 Q.B. 309.

(4) *Slim* v. *Daily Telegraph Ltd.* [1968] 2 Q.B. 157, 172.

(5) *Morgan* v. *Odhams Press Ltd.* [1971] 2 All E.R. 1156, 1184; [1971] 1 W.L.R. 1239, 1269.

(6) *Livingstone* v. *Rawyards Coal Co.* (1880) 5 App. Cas. 25, 39.

(7) *McCarey* v. *Associated Newspapers Ltd.* [1965] 2 Q.B. 86, 109.

(8) *Preed* v. *Graham* (1889) 24 Q.B.D. 53.

CIVIL SUIT.

M. Shankar for the plaintiff.

Chan Siew Yoon for the defendants.

Abdul Hamid J.: The claim is for damages for libel contained in: —

(a) an article in "Pacemaker" news publication of the 3rd defendant of June 10, 1970;

(b) a letter of July 27, 1970 by the 2nd defendant Lian Eng Siong; and

(c) a letter of September 22, 1970 by the 1st defendant O.C. Nio with a leaflet enclosed therewith entitled "How to identify a Twister".